

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

Julienne Wyckoff and Carolyn Laine,

Complainants,

vs.

Gary Peterson and Robert Williams,

Respondents.

**NOTICE OF DETERMINATION OF  
PRIMA FACIE VIOLATION  
AND  
NOTICE OF AND ORDER FOR  
EVIDENTIARY HEARING**

**To: Julienne Wyckoff, 4261 Reservoir Blvd., Columbia Heights, MN 55421; Carolyn Laine, 1908 41<sup>st</sup> Avenue NE, Columbia Heights, MN 55421; Gary Peterson, 3712 Lincoln, Columbia Heights, MN 55421; and Robert Williams, 4047 Cleveland, Columbia Heights, MN 55421.**

On January 20, 2005, Julienne Wyckoff and Carolyn Laine filed a Complaint with the Office of Administrative Hearings alleging that Gary Peterson and Robert Williams violated Minnesota Statutes sections 211A.02, 211A.13, 211B.12, and 211B.13. The Complaint also alleged that Gary Peterson violated Minnesota Statute § 211B.06 by disseminating false campaign material. After reviewing the Complaint and attached documents, the undersigned Administrative Law Judge has determined that some of the allegations in the Complaint set forth prima facie violations of chapter 211A and 211B. This determination is described in more detail in the attached Memorandum.

**THEREFORE, IT IS HEREBY ORDERED AND NOTICE IS HEREBY GIVEN** that this matter will be scheduled for a prehearing conference and evidentiary hearing to be held at the Office of Administrative Hearings, 100 Washington Avenue South, Suite 1700, Minneapolis, Minnesota 55401, before three Administrative Law Judges. The evidentiary hearing must be held within 90 days of the date the complaint was filed, pursuant to Minn. Stat. § 211B.35. You will be notified of the date and time of the prehearing conference and evidentiary hearing, and the three judges assigned to it, within one week of the date of this Order. The evidentiary hearing will be conducted pursuant to Minnesota Statutes § 211B.35. Information about the evidentiary hearing procedures and copies of state statutes may be obtained online at [www.oah.state.mn.us](http://www.oah.state.mn.us) and [www.revisor.leg.state.mn.us](http://www.revisor.leg.state.mn.us).

At the evidentiary hearing all parties have the right to be represented by legal counsel, by themselves, or by a person of their choice if not otherwise prohibited as the unauthorized practice of law. In addition, the parties have the right to submit evidence, affidavits, documentation and argument for consideration by the Administrative Law Judge. Parties should bring with them all evidence bearing on the case with copies for the Administrative Law Judge and opposing party.

After the evidentiary hearing, the Administrative Law Judges may dismiss the complaint, issue a reprimand, or impose a civil penalty of up to \$5,000. The panel may also refer the complaint to the appropriate county attorney for criminal prosecution. A party aggrieved by the decision of the panel is entitled to judicial review of the decision as provided in Minn. Stat. §§ 14.63 to 14.69.

Any party who needs an accommodation for a disability in order to participate in this hearing process may request one. Examples of reasonable accommodations include wheelchair accessibility, an interpreter, or Braille or large-print materials. If any party requires an interpreter, the Administrative Law Judge must be promptly notified. To arrange an accommodation, contact the Office of Administrative Hearings at 100 Washington Avenue South, Suite 1700, Minneapolis, MN 55401, or call 612/341-7610 (voice) or 612/341-7346 (TTY).

Dated: January 21, 2005

/s/ Allan W. Klein

---

ALLAN W. KLEIN  
Administrative Law Judge

### **MEMORANDUM**

For purposes of these determinations, the facts alleged in the Complaint are assumed to be true because they are not patently false or inherently incredible.

In 2004, Complainant Julianne Wyckoff ran for reelection as Mayor of Columbia Heights against Respondent Gary Peterson, a former Mayor of Columbia Heights. In addition to the mayoral race, there were two open seats for City Council, including Respondent Robert Williams's seat. Complainant Carolyn Laine was a candidate for City Council. Gary Peterson was elected Mayor of Columbia Heights, beating Ms. Wyckoff by approximately 500 votes (4,819 to 4,318). And incumbents Robert Williams and Bruce Nawrocki were reelected to the City Council.

The Complainants have made three allegations in their Complaint. First, the Complainants allege that both Peterson and Williams paid a local developer, Bruce Nedegaard, to put their campaign signs on the boulevard in front of his businesses on Central Avenue. The Complainants allege that Respondents paid by checks and that one check was written from the account of Freedom Oil, a company privately owned by Respondent Williams. The Complainants allege that neither Peterson nor Williams listed these payments as expenditures on their campaign reports in violation of Minn. Stat. §§ 211A.02, subd. 2, and 211A.13.

Pursuant to Minnesota Statutes § 211A.02, subd. 1, candidates or committees who make disbursements of over \$750 in a calendar year, must file financial reports with the "filing officer"<sup>[1]</sup> for that office. Among other information, the reports must include the total amount of receipts and expenditures for the reporting period.<sup>[2]</sup> If the evidence at a hearing were to establish that Respondents did pay Mr. Nedegaard

money to post campaign signs on his property and that Respondents failed to report these expenditures on their required financial reports, those facts would establish a violation of Minn. Stat. § 211B.02. The Administrative Law Judge therefore determines that the Complaint has established a prima facie violation of Minn. Stat. § 211B.02 with respect to this allegation.

Failure to report this expenditure is not, however, a violation of Minn. Stat. § 211A.13. Section 211A.13 prohibits candidates from making contributions to a principal campaign committee, unless the contribution is made from the personal funds of the candidate. It appears that Complainants may be alleging that Respondent Williams violated this section by paying Mr. Nedegaard with a check drawn from Freedom Oil's account instead of from his own personal account. But section 211A.13 does not address contributions or payments to individuals. It is limited to transfers between candidates and principal campaign committees.<sup>[3]</sup> The Administrative Law Judge concludes that Complainants have failed to establish a prima facie violation of Minn. Stat. § 211A.13 with respect to this allegation.

The Complainants allege next that Respondents violated Minn. Stat. §§ 211B.12 and 211B.13 by delivering fried chicken and soft drinks to a senior high rise located in Columbia Heights, which they visited as part of their campaign. The food and drinks were supplied from the diner in Respondent Peterson's Autoworld business. Approximately 30 residents of the high rise attended. The Complainants allege that this expenditure was not allowable under Minn. Stat. § 211B.12, and violated the prohibition in section 211B.13 against giving food or anything of monetary value in order to induce a voter to vote in a certain way. In addition, the Complaint alleges that Respondent Williams failed to report this expenditure in violation of Minn. Stat. § 211A.02.

If the evidence at a hearing were to establish that the Respondents did provide the chicken dinners to the seniors in order to induce them to vote for the Respondents, and that the value of the food was more than "nominal", those facts could establish a violation of Minn. Stat. §§ 211B.12 and 211B.13, and 211A.02. It should be up to the panel to decide this issue. The Administrative Law Judge therefore determines that Complaints have established a prima facie violation of Minn. Stat. §§ 211B.12, 211B.13 and 211A.02, with respect to this allegation.

Finally, the Complaint alleges that Respondent Peterson prepared and disseminated campaign material that contained false statements about Ms. Wyckoff and about his own accomplishments that were designed to promote Peterson's candidacy. Specifically, the Complaint alleges that Peterson sent a mailer that stated: "While my opponent was living out of state during my previous tenure of 14 years as a council member and two terms as Mayor of Columbia Heights, we did not stand still." The Complainants maintain that this is a false statement because it implies that Wyckoff had just recently moved to the City, when in fact she has resided in Columbia Heights since 1993 and was elected to the Council herself in 1999 (during Peterson's two terms as Mayor). The Complainants also contend that Peterson's list of accomplishments is false because it implies that all of the accomplishments were completed while Peterson was in elected office. The Complainants allege that some of the accomplishments listed were completed prior to Peterson becoming a Council member in 1985 and others were completed while Peterson was Mayor and Wyckoff was a Council member.

Minn. Stat. § 211B.06, subd. 1, provides, in part:

“A person is guilty of a gross misdemeanor who intentionally participates in the preparation, dissemination ... of ... campaign material with respect to the personal or political character or acts of a candidate ... that is designed or tends to elect ... [or] promote ... a candidate for election to a public office ..., that is false, and that the person knows is false or communicates to others with reckless disregard of whether it is false.”

The Administrative Law Judge finds that the Complainants have established a prima facie violation of Minn. Stat. § 211B.06 with respect to the statement in the mailer referring to Ms. Wyckoff living out of state. The sentence implies that Wyckoff has not lived in Columbia Heights during Peterson’s “tenure of 14 years as a council member and two terms as Mayor of Columbia Heights.” If the evidence at a hearing were to establish that Wyckoff has lived in the City since 1993, those facts could establish a violation of Minn. Stat. § 211B.06.

The Administrative Law Judge finds that the Complainants have failed to establish a violation of Minn. Stat. § 211B.06 regarding Peterson’s list of accomplishments. The heading of the list states: “Below are just some of those significant accomplishments our previous councils helped achieve ...” After the list of accomplishments, Peterson states: “These accomplishments were the result of councils that were involved with the community.” Contrary to the Complainants’ claim, Peterson is not taking personal credit for all of these accomplishments. Instead, he has clearly stated that the accomplishments were the result of past City Councils that were responsive to the community’s needs. The Complainants have failed to establish a prima facie violation with respect to this allegation.

A.W.K.

---

<sup>[1]</sup> Minn. Stat. § 211A.01, subd. 7, defines “filing officer” to mean the officer authorized by law to accept affidavits of candidacy or nominating petitions for an office or the officer authorized by law to place a ballot question on the ballot.

<sup>[2]</sup> Minn. Stat. § 211A.02, subd. 2(3).

<sup>[3]</sup> See, Op. At. Gen., 627e, Aug. 1, 1994.